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UNCLAS SECTION 01 OF 04 MONTERREY 000201

SIPDIS

C O R R E C T E D C O P Y (CHANGED ACTION ADDEE)

DEPT FOR CA/VO AND CA/FPP
DHS FOR USCIS
DOL FOR ITA, FRAUD DETECTION AND PREVENTION DIVISION
NEW DELHI PLEASE PASS CONSTITUENT POSTS

E.O. 12958: N/A

TAGS: [CVIS](#) [KFRD](#) [ELAB](#) [MX](#)

SUBJECT: MISREPRESENTATIONS BY STAFFING AGENCIES UNDER THE H-2B
TEMPORARY WORKER PROGRAM

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¶1. Summary/Action Request. Post has identified a growing trend in which staffing agencies are petitioning increasing numbers of H-2B temporary worker visas for needs that are neither temporary nor seasonal, but year-round. Such action a) introduces multiple opportunities for fraud and abuse, b) ultimately dilutes the benefits of this program for both H2B employers and their beneficiaries, and c) disadvantages U.S. workers who might want to compete for these jobs. Action request for VO guidance on temporariness and staffing agencies in paragraph thirteen. This cables has been coordinated with other H-2B issuing posts in Mexico. End Summary/Action Request.

BACKGROUND

¶2. Additional personnel and resources from H&L Anti Fraud Funds have enabled FPU to conduct more thorough verification of information on petitions prior to applicants arriving for interviews. The information provided by USCIS officers who participated in the H2 Anti-fraud conference in Guatemala in September 2008 and a visit to USCIS California Service Center gave officers and LES a clearer understanding of how the labor certification and petition adjudication process is intended to function. Officials in both CIS and DOL have asked post to exchange information from interviews with returning workers and this cable is a part of the information sharing process.

¶3. Since February 1, 2009 post has found more than 60 cases in which H2B petitions had to be sent back to USCIS with requests for revocation. The information below pertains to one of the most common types of fraud, that committed by staffing agencies falsely claiming that their need for workers is temporary or seasonal.

THE WORK OF TEMPORARY STAFFING AGENCIES

14. Temporary staffing agencies petition for H2B temporary workers in order to contract them out to other firms. Staffing agencies advertise themselves as a "one stop shop" for clients that prefer not to recruit workers abroad or navigate the H2B petition process themselves. Because staffing agencies typically retain the H-2 beneficiaries in their employ and "rent them out" to client firms, they relieve those clients of all the administrative work and financial responsibilities required of a direct employer. In return for supplying a temporary workforce, the staffing agency charges its clients a premium over the wage authorized by the Department of Labor. The majority of H2B petitions received in Monterrey are for either common construction laborers or landscape laborer that list a salary as between \$8 - 11 US/hour depending on the location the work is being performed. The margin between what the end user pays the staffing agency and what the staffing agency pays the beneficiaries represents the staffing agency's gross income.

WHEN TEMPORARY AND SEASONAL IS NOT

15. Under the H2-B program, a petitioner's need for temporary workers must not be ongoing or continuous. In the case of a staffing agency, the need for work performed for the end user might be temporary and seasonal, but the need of the staffing agency is not, as it provides labor year round to anybody who will contract it. Post has found that petitions from staffing agencies often overlap to cover an entire year, shifting among multiple company names and with a variety of justifications of dubious credibility. Since many such staffing agencies publicly advertise year round availability even on short notice, it would

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appear that the job descriptions and locations submitted in their petitions are at best informed guesses. Their business model often stands in stark contrast to the DOL requirement that petitioners specify the kind of work to be performed and the location where it will be performed. DOL's Foreign Labor Certification Training and Employment Guidance Letter number 21-06 states, "when the job opportunity requires work to be done at multiple locations either within the jurisdiction of the State Workforce Agency (SWA) or within the metropolitan statistical area (MSA) that covers multiple SWA's, the application must include the names and physical addresses of each location." Post understands the purpose of this rule is to provide the ICE, DS, and DOL-OIG the opportunity to conduct unannounced inspection at authorized job sites as listed by the petitioner. Post has seen multiple petitions approved this year in which the worksite locations were not specified.

TRUTH IN PETITIONING

16. Staffing agencies overwhelmingly petition for the lowest paying labor categories defined by the DOL, regardless of the work to be performed. While all petitioners have a financial incentive to do so, staffing agencies truly do not know how their beneficiaries will ultimately be employed, and so choose the most unskilled and labor categories available, such as landscaper or general laborer. Meanwhile, agencies advertise on websites that workers that can "lead crews" and perform "specialized skills." It also seems likely that staffing agencies are aware that demand for H2B workers has long outstripped the annual supply made available by Congress, and so strive to secure as many H2B visas as they can, regardless of actual, contracted needs.

THE LAW OF UNINTENDED CONSEQUENCES

17. Many businesses with temporary and seasonal needs are willing to enlist the services of a staffing agency and pay for the services described in paragraph (4). If the H2B program was not limited by the annual cap of 66,000 visas per year, this would be an understandable business decision. However, given the annual cap on H2B visas, staffing agencies have a financial incentive to petition as many H2B beneficiaries as they can, with or without actual contracts of employment, with the intention of "flipping them," that is, seeking new contracts not disclosed on the original petition. Additionally, the agencies then seek extensions of the workers' visas from USCIS, and keep them gainfully employed among shifting job sites as much as possible, regardless of the terms of the original petition. As evinced by the number of businesses every year who fail in their attempt to petition H2B workers before the cap is reached, staffing agencies force out many business who would otherwise participate directly in the H2B program. There is little doubt that some of these businesses are then driven to work with and pay a premium to the staffing agencies who managed to get their petitions approved first, often via fraudulent claims.

CASE STUDY I: GB CAPITAL

18. GB Capital is listed in Lexus Nexus as an investment consulting business in St. Charles, Missouri. They describe themselves as a "Hospitality Service" in petition WAC0903850043 and EAC0904451724. Monterrey's FPU investigation determined that GB Capital does not own or operate any hotels or hospitality-related operations. Monterrey noted that the 26 applicants applying with GB Capital to serve as housekeepers for the Intercontinental Hotel in Kansas City were male and only needed for two months according to the petition. In

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investigating GB Capital further, it was discovered that in petition EAC0904451724 the company had again petitioned male applicants to perform maid services for the Hyatt Regency in Tampa Bay, FL for a shorter period than most petitions.

19. (SBU) FPU Monterrey contacted the human resource (HR) manager of the Intercontinental Hotel in Kansas City. The manager confirmed the hotel had a relationship with GB Capital, but that it had not recently requested workers nor was the hotel expecting any additional workers. The hotel was actually releasing staff due to the local economic conditions. FPU also contacted HR manager at the Hyatt Regency in Tampa Bay, FL. The manager confirmed the Hyatt had no relationship with GB Capital. The manager also stated the hotel was not requesting any workers. In both cases, the managers informed FPU that their hotels do not employ male housekeepers. The visa applications were refused under Section 221g and post sent the petitions WAC0903850043 back for revocation consideration. No applicants for petition EAC0904451724 applied in Monterrey. Monterrey shared information about this petition with Embassy Santo Domingo; officers there refused applicants for GB Capital on this petition under Section 221(g).

110. Weeks later, the applicants refused in Monterrey arrived along with others in Mexico City to apply for visas under a new petition filed by Ambassador Seasonal Concepts, petition number EAC0904450718. FPU investigation confirmed that an owner at Ambassador Seasonal Concepts is married to a manager at GB

Capital. Monterrey and Mexico City FPMs coordinated during the adjudications and the visas were not issued.

FRAUD CASE STUDY II: WORKFORCE PLUS (DBA THE ACCENT GROUP)

¶11. One of the most egregious cases of staffing agency misrepresentation can be found in a petition EAC0813150959 filed by Workforce Plus LLC from Baton Rouge, Louisiana. Workforce Plus, which also files under the name The Accent Group, filed a petition for 150 workers to perform electric substation repair work in Louisiana. This petition was approved in April 2008. Prior to the arrival of 26 applicants to for interview in Monterrey March 5, 2009, post's FPU contacted a representative of Workforce Plus who confirmed the workers were going to work as substation repairman for a client named Irby Construction Company (ICC). Further research revealed that ICC is owned by the mother-in-law of the owner of Workforce Plus.

¶12. The beneficiaries of this petition stated that they were returning workers, destined for Money Hill Golf and Country Club in Baton Rouge LA. A representative at that club confirmed to FPM in a phone conversation that the club had contracted with Workforce Plus to provide the group of workers for a flat fee of US \$9000, and were awaiting their arrival. There was no sub-station work, nor were the workers qualified or experienced to conduct such work. The visa applications were refused 214b on March 5, 2009 and post subsequently sent the petition back for revocation. A golf club representative told FPM that the club used Workforce Plus because the I-129 petition it had filed with USCIS was not processed because the H2B cap had already been met.

ACTION REQUEST

¶13. Post requests assistance from VO/L/A in clarifying with DOL on the question of temporariness of need as it applies to staffing agencies. DOL officials told conoffs both at the

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Guatemala conference and in the March 3 teleconference that in order for a staffing agency to obtain labor certification for temporary workers, the staffing agency itself must have a temporary or seasonal need for the workers. The temporariness or seasonality cannot be based on the needs of the staffing agencies client companies. However, post has seen a number of petitions similar to the examples described above in which labor certifications and subsequent I-129 petitions for H2B workers for year round staffing agencies have been approved.
WILLIAMSON